

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-573479
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Walter H. SIBLEY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1972

Walter H. SIBLEY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 28 October 1971, an Administrative Law Judge of the United States Coast Guard at San Francisco, California suspended Appellant's seaman's documents for 3 months outright plus 5 months on 12 months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as a Bosun/AB on board the SS CHICAGO under authority of the document above captioned, while the vessel was at sea, Appellant:

- (1) On 12 August 1970, wrongfully continued disobedience to a lawful order;
- (2) On 13 and 14 August 1970, wrongfully failed to perform his duties due to intoxication and disobedience of a lawful order; and
- (3) On 15, 16, and 17 August 1970, wrongfully failed to perform his duties and disobeyed a lawful order.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence photostatic copies of certain pages of the Official Logbook of the vessel.

In defense, Appellant offered in evidence his own testimony.

After the hearing, the Administrative Law Judge rendered a decision in which he concluded that the charge and the above specifications had been proved. He then entered an order suspending all documents, issued to Appellant, for a period of 3 months outright plus 5 months on 12 month's probation.

The entire decision was served on 3 November 1971. Appeal was timely filed on 2 June 1972.

FINDINGS OF FACT

On all relevant dates, Appellant was serving as a Bosun/AB on board the SS CHICAGO and acting under authority of his document while the ship was at sea.

On 12 August 1970, the vessel departed the port of Oakland, California, short one Able Seaman due to his failure to join. Appellant, who had signed on as Bosun, was re-rated Able Seaman at no reduction in wages and assigned to the 8-12 watch. He stood the 0800-1200 watch, but refused to comply with the Masters's order to stand the 2000-2400 watch. He thenceforward continuously disobeyed the Master's orders to stand the 8-12 watches, until the evening of 17 August 1970. Furthermore, on 14 August 1970, during the 0800-1200 watch, Appellant was found asleep at his desk in an apparently intoxicated condition.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

- (1) there was an excessive delay in the rendering of the decision of the Administrative Law Judge, and
- (2) the orders of the Master, which Appellant declined to obey, were unlawful.

APPEARANCE: Jennings, Gartland and Tilly, by John G. Warner, Esq.

OPINION

With regard to Appellant's first basis for appeal, it must be noted that a delay in the rendering of the decision of the Administrative Law Judge does not per se constitute grounds for reversal. The facts of the case must be scrutinized in order to determine the reasons for the delay, the possible prejudices to the Appellant occasioned thereby, and the effect upon the remedial nature of the proceedings.

The decision in this case was rendered some eleven months after the close of the hearing, during which period the Administrative Law Judge had to resolve conflicting evidence on matters of fact and adjudicate the legal issue as to the lawfulness of the Masters's orders. During this same period, unfortunately, Appellant's document became the subject of another disciplinary

proceeding which culminated on 11 August 1971 with an order of three months' outright suspension plus three months on 12 months' probation for assault and battery on a fellow crewmember on 8 June 1971. The Administrative Law Judge included this item in Appellant's prior record as listed on pages 1 and 2 of his Decision in the present case.

This matter is further complicated by the fact the hearing record fails to illuminate the procedure used for ascertainment of Appellant's prior record. As stated in Appeal Decision 1472 (MOHUN), 46 CFR 137920-160 "contemplates . . . the presence of the person charged at the time the record is inquired into, unless presence has been waived . . ." The record of proceedings in this case reflects neither presence nor waiver. It is, in fact, silent on the matter.

Because a number of the prior offenses noted by the Administrative Law Judge bear great similarity to those found proved in the instant case, the possibility for prejudice occasioned by an improper ascertainment of the prior record is obvious. The uncertainty as to the procedure followed in this regard, coupled with the consideration of an offense committed approximately seven months after the termination of the hearing, requires that the order of the Administrative Law Judge be vacated. Furthermore, consideration of the remedial nature of suspension proceedings and the lapse of almost three years from the date of the offenses found proved indicates that no purpose would be served by further proceedings in this case.

Due to the disposition of the above discussed basis for appeal, Appellant's other contention need not be addressed.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California on 28 October 1971, is VACATED and the charge DISMISSED.

T. R. SARGENT
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C. this 5th day of July 1973.

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